

EXHIBIT 2

FILED UNDER SEAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SONOS, INC.,
Plaintiff,
vs. Case No. 3:21-CV-07559-WHA
GOOGLE LLC
Defendant.

- AND -

GOOGLE LLC,

Plaintiff,

vs.

Case No. 3:20-CV-06754-WHA

SONOS, INC.,

Defendant.

CONFIDENTIAL - ATTORNEYS' EYES ONLY

ZOOM DEPOSITION OF JAMES E. MALACKOWSKI

(Reported Remotely via Video & Web videoconference)

Miami, Florida (Deponent's location)

Monday, January 30, 2023

Miami, Florida (Deponent's location)

Volume 1

STENOGRAPHICALLY REPORTED BY:

REBECCA L. ROMANO, RPR, CSR, CCR

California CSR No. 12546

Nevada CCR No. 827

Oregon CSR No. 20-0466

Washington CCR No. 3491

JOB NO. 5686085

PAGES 1 - 297

1 principle is the one that would apply. 05:21:38

2 Q. Yeah. By "not specific," I mean it's not
3 limited to them and it applies to essentially every
4 app on the App Store, regardless of -- of whether
5 it relate to music or something else or grouping of 05:21:52
6 speakers or something else or for the IFTTT app or
7 something else or casting or something else?

8 A. True, but more importantly, I would focus
9 on the fact that it would apply to casting or music
10 grouping or things of that nature. 05:22:06

11 Q. Are you aware of any evidence that Sonos
12 has ever assumed the role of an app developer in
13 real-world licensing negotiations?

14 A. As I describe within my report, Sonos'
15 licensing policy and practice is to avoid that and 05:22:21
16 to keep their technology proprietary unless there
17 is a broader strategic decision or they're trying
18 to settle a dispute. So they would not seek to do
19 that, which is another reason why this conclusion
20 is conservative, because Sonos -- this would not be 05:22:34
21 something they would willingly do.

22 Q. And that's -- that's why you're not aware
23 of any evidence that Sonos has ever assumed that
24 role?

25 A. Well, I'm not aware of any evidence 05:22:48

1 because of the description in my report describing 05:22:49
2 Sonos' policy regarding their technology. So it
3 certainly includes that, and I'm not seeing any
4 discovery that would suggest otherwise.

5 Q. You're saying discovery from Sonos? 05:23:03

6 A. Correct.

7 Q. And have you ever seen any evidence that 05:23:17
8 Google has used this commission it charges on apps
9 in the Play Store as a data point in real-world
10 licensing negotiations?

11 A. I have not specifically seen that for two 05:23:33
12 reasons, both of which we've discussed. One is
13 that under Google's paradigm of efficient
14 infringement, it seeks not to have those proactive
15 licenses that would naturally invoke this
16 principle.

17 And then secondly, the data points that 05:23:46
18 Google has provided as exemplars of licensing
19 activity are generally in settlement of litigation
20 or part of cooperative patent acquisitions.

21 So, again, A, that confirms their lack of
22 relevance, and B, that reinforces the efficient
23 infringement paradigm.

24 Q. You -- are you aware of any evidence that 05:24:04
25 anyone has ever used the 70/30 split that Google

1 charges app developers on the App Store -- on the 05:24:08

2 Play Store as a relevant data point for patent
3 license negotiations?

4 A. Yes. Going back to our discussion 05:24:16
5 earlier today, I've used it before, and I believe
6 there's at least one publicly discussed case from
7 your firm that's used it.

8 Q. But you don't recall the names of any of
9 those cases?

10 A. Not as I sit here, no. 05:24:27

11 Q. Are you aware of any evidence that Google
12 has agreed to a revenue share as high as 30 percent
13 before?

14 A. Well, Google agrees to revenue shares all
15 the time for applications across the App Store. If 05:24:43
16 you're talking about for a patent license per se,
17 for the reasons I've just described to you
18 regarding their paradigm at play and the types of
19 documents they produced in this case, no, I haven't
20 seen it. 05:24:59

21 Q. Yeah, and I should have clarified my
22 question was in the context of -- of patents.

23 Thank you.

24 Are you aware of any evidence that Google
25 has agreed to a revenue share on products where it 05:25:09

1 Q. These -- this section of your report 05:38:17
2 talking about Sonos' negotiating history with
3 Google does not reference any -- any proposed 70/30
4 revenue split, correct?
5 A. It does not. They are proposing that 05:38:34
6 that be a factor -- a sharing -- some sharing be
7 factored into the analysis. And so specifically
8 they talk about Sonos contribution versus Google's
9 identified features and -- and contribution.
10 Q. Right. But those are not -- yeah. Okay. 05:39:01
11 Are you aware of any real-world evidence
12 that Sonos has -- has ever agreed to or -- or would
13 have agreed to in the hypothetical negotiation to
14 the 70/30 revenue split?
15 A. I believe I say in my report that I don't 05:39:20
16 believe Sonos would have, because they had no
17 desire to license Google at all. They are --
18 especially in this context of -- without the larger
19 strategic relationship. They would prefer to keep
20 their technology exclusive. 05:39:35
21 That said, they have to come to some
22 terms in the negotiation, so I think the fact that
23 we're only talking about the 70/30 sharing after we
24 conservatively estimate the pie to be shared, which
25 at every turn was a conservative assessment in 05:39:51

1 I, Rebecca L. Romano, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

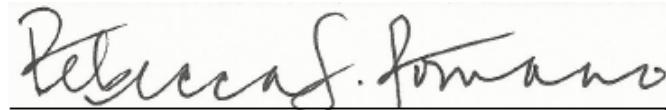
4 That the foregoing proceedings were taken
5 before me remotely at the time and place herein set
6 forth; that any deponents in the foregoing
7 proceedings, prior to testifying, were administered
8 an oath; that a record of the proceedings was made
9 by me using machine shorthand which was thereafter
10 transcribed under my direction; that the foregoing
11 transcript is true record of the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [X] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: February 2, 2023

22
23 
24

25 Rebecca L. Romano, RPR, CCR

CSR. No 12546